

*** NOT FOR PUBLICATION ***

NO. 24855

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

CINDY PERREIRA, Defendant-Appellant.

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-CR NO. 00-1-0422)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

The defendant-appellant Cindy Perreira appeals from the judgment of the family court of the third circuit, the Honorable George S. Yuda presiding, filed on December 21, 2001, convicting her of and sentencing her for the offense of violation of an order for protection, in violation of Hawai'i Revised Statutes (HRS) § 586-11 (Supp. 2001). Perreira's sole contention on appeal is that the family court plainly erred in taking judicial notice of the time of the hearing on the order for protection [hereinafter, "the restraining order hearing"] at issue in the present matter.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the judgment of the family court. Inasmuch as the time of the restraining order hearing was a fact "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," see Hawai'i Rules of Evidence (HRE) Rule 201(b) (1993), it constituted an "adjudicative fact" within

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the meaning of HRE Rule 201(b), of which the family court, in its discretion, could have taken judicial notice. See also HRE Rule 201(c) (1993) ("A court may take judicial notice, whether requested or not."). Moreover, Perreira's failure to object to the family court's decision to take judicial notice of the time of the restraining order hearing constituted a waiver of the issue for purposes of appeal. See HRE Rule 103(a)(1) (1993) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . a timely objection . . . appears of record, stating the specific ground of objection"). Finally, assuming arguendo that the time of the restraining order hearing did not constitute an "adjudicative fact" within the meaning of HRE Rule 201(b), the family court's decision to take judicial notice of the foregoing fact did not affect Perreira's substantial rights at trial, inasmuch as there was sufficient evidence, irrespective of the time of the restraining order hearing, from which to conclude that Perreira violated the family court's order for protection, issued on December 28, 1999, in violation of HRS § 586-11. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 18, 2004.

On the briefs:

Bryant Zane, deputy public
defender, for the
defendant-appellant
Cindy Perreira

Kevin Hashizaki, deputy
prosecuting attorney, for
the plaintiff-appellee
State of Hawai'i